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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *2013-577*

11 **JOSEAND JAY JACILDO CABILLO**
12 **24439 E. Deepsprings Drive**
13 **Diamond Bar, CA 91765**

A C C U S A T I O N

14 **Registered Nurse License No. 762381**

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about October 30, 2009, the Board of Registered Nursing issued Registered
24 Nurse License Number 762381 to Joseand Jay Jacildo Cabillo (Respondent). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on November 30, 2013, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Registered Nursing (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

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6 **STATUTORY PROVISIONS**

7 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
8 that the Board may discipline any licensee, including a licensee holding a temporary or an
9 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
10 Nursing Practice Act.

11 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
12 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
13 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
14 Code, the Board may renew an expired license at any time within eight years after the expiration.

15 6. Section 2761 of the Code states:

16 "The board may take disciplinary action against a certified or licensed nurse or deny an
17 application for a certificate or license for any of the following:

18 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

19 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
20 functions.

21 ...

22 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
23 functions, and duties of a registered nurse, in which event the record of the conviction shall be
24 conclusive evidence thereof.

25 7. Section 2762 of the Code states:

26 "In addition to other acts constituting unprofessional conduct within the meaning of this
27 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
28 chapter to do any of the following:

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

REGULATIONS

9. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

10. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

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"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

11. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.” ...

COST RECOVERY

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 13. Respondent is subject to disciplinary action under section 2761, subdivision (a) on the
4 grounds of unprofessional conduct within the meaning of California Code of Regulations, title 16,
5 section 1443, involving the treatment of Patient D.S.¹ by failing to exercise the degree of learning,
6 skill and experience ordinarily possessed and exercised by a competent registered nurse.

7 14. The circumstances surrounding these acts are such that on or about May 31, 2011,
8 Respondent knowingly and willingly practiced outside the scope of his practice when he wrote
9 and executed a telephone order for x-rays for patient D.S. without a physician's order. In doing
10 so, Respondent failed to follow the established standards of practice of his then employer,
11 Kindred Healthcare, that no employee shall provide medical services or treatment that he or she is
12 not authorized, certified, or licensed to provide.

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14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Incompetence)**

16 15. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1) on
17 the grounds of unprofessional conduct, in that Respondent committed acts of incompetence
18 within the meaning of California Code of Regulations, title 16, sections 1443 and 1443.5,
19 involving the treatment of Patient D.S. by failing to exercise the degree of learning, skill and
20 experience ordinarily possessed and exercised by a competent registered nurse.

21 16. The circumstances surrounding these acts are set forth in above in paragraphs 13 and
22 14, and are incorporated herein as though set forth fully.

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27 ¹ In order to protect the patient's privacy, initials are used in place of the patient's full
28 name.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 17. Respondent is subject to disciplinary action under sections 490 and 2761,
4 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that
5 on or about September 8, 2011, Respondent was convicted of a crime substantially related to the
6 functions or duties of a registered nurse which to a substantial degree evidences his present or
7 potential unfitness as a registered nurse to practice in a manner consistent with the public health,
8 safety, or welfare. The circumstances of the conviction are as follows:

9 a. On or about September 8, 2011, after pleading nolo contendere, Respondent was
10 convicted of one misdemeanor count of violating Vehicle code section 23152 subdivision (b)
11 [driving under the influence of alcohol with a BAC of .08% or above] in the criminal proceeding
12 entitled *The People of the State of California v. Jose and Jay Cabillo* (Super. Ct. Los Angeles
13 County, 2011, No. 1JB05791). The Court sentenced Respondent to three (3) years of probation
14 with terms and conditions.

15 b. The details of the conviction are such that on or about April 19, 2011 Respondent was
16 detained and subsequently arrested for driving under the influence of alcohol.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Dangerous Use of Alcohol/Controlled Substance)**

19 18. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
20 2762, subdivision (b) and (c), on the grounds of unprofessional conduct, in that, on or about April
21 19, 2011, Respondent used alcohol to an extent or in a manner dangerous or injurious to herself or
22 others. Complaint refers to and by this reference incorporates the allegations set forth above in
23 paragraph 17 subsections (a) and (b), inclusive, as though set forth fully.

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2 **PRAYER**

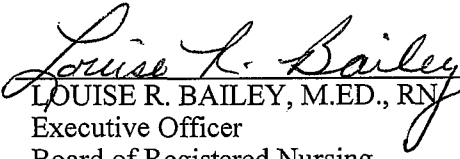
3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
4 and that following the hearing, the Board of Registered Nursing issue a decision:

5 1. Revoking or suspending Registered Nurse License Number 762381, issued to Joseand
6 Jay Jacildo Cabillo

7 2. Ordering Joseand Jay Jacildo Cabillo to pay the Board of Registered Nursing the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.
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14 DATED: JANUARY 19, 2013


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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